IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE A.K.BASHEER

FRIDAY, THE 1ST JUNE 2007 / 11TH JYAISHTA 1929

WP(C).No. 4654 of 2007(D)

PETITIONER:

SHIMNA M.P.,
SHINOY NIVAS, PARADANCHAL, P.O. P.R.NAGAR,
KANNUR DISTRICT.

BY ADV. SRI.M.VIJAYAKUMAR

RESPONDENTS:

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1. THE ASSISTANT EDUCATIONAL OFFICER,
MATTANNUR, KANNUR DISTRICT.

2. THE MANAGER,
PORORA U.P. SCHOOL, P.O. PORORA, KANNUR DISTRICT.

3. THE DIRECTOR OF PUBLIC INSTRUCTIONS,
THIRUVANANTHAPURAM-14.

BY GOVT. PLEADER SMT. M.R. SREELATHA
ADV. SRI.V.A.MUHAMMED
SRI.K.E.HAMZA

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 01/06/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WPC NO.4654/07

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1. COPY OF ORDER OF THE D.P.I. NO.K.Dis.78161/05/G4/DPI DT. 6.1.06

EXT.P2. COPY OF ORDER APPROVING APPOINTMENT OF THE PETITIONER DT. 19.11.03

EXT.P3. COPY OF ORDER ISSUED BY 1ST RESPONDENT DT. 21.12.06

/TRUE COPY/

PA TO JUDGE.

A.K. BASHEER, J.

W.P.(C). NO. 4654 OF 2007

Dated this the 1st day of June, 2007

J U D G M E N T

Petitioner had got appointment as Part-time Hindi teacher for a short duration with effect from November 19, 2003 till January 19, 2004. The said appointment was refused to be approved by respondent No.1. The above order was confirmed in appeal by the District Educational Officer. However, in a revision preferred by the manager, the Director of Public Instruction took the view that the appointment was liable to be approved. Therefore, he directed the Assistant Educational Officer, Mattannur, to approve the appointment of the petitioner as Part-time Hindi teacher for the period mentioned above, "if it is otherwise in order." (Emphasis supplied). A copy of the said order is on record as Ext.P1. Consequently, on January6, 2006, Ext.P2 order was passed by respondent No.1, in terms of the direction issued by the Director of Public Instruction. Thus the appointment of the petitioner was approved. She was paid salary also.

2. However, on December 21, 2006, respondent No.1 passed Ext.P3 order by which he directed the Headmaster of the school to recover the salary and allowances paid to the petitioner as a leave substitute for the period she had worked. According to respondent No.1, qualified retrenched teachers were available in the revenue district to be absorbed in

the above vacancy against which the petitioner was appointed. Those retrenched teachers had worked for two years and they were paid two vacation salaries also. However, this fact was omitted to be noticed by oversight. In that view of the matter, respondent No.1 took the view that the order of approval passed in favour of the petitioner was liable to be treated as null and invalid. It was thus that he had passed Ext.P3 order. Learned counsel for the petitioner points out that respondent No.1 had no authority or jurisdiction to review his own order, and therefore, the order passed by respondent No.1 is without any jurisdiction.

3. Having heard learned counsel for the petitioner and the learned Government Pleader, and having perused the materials placed on record, I find considerable force in the contention raised by the learned counsel. It is trite that any inadvertent error in an order of approval can be rectified by the competent authority. But the short question is whether respondent No.1 had the competence, authority and jurisdiction to do so in this particular case. If he had noticed any error or illegality in the order of approval of appointment passed in favour of the petitioner, he ought to have referred the matter to the authority in terms of whose direction he had passed the order of approval. Even assuming that the error or irregularity was noticed later, had escaped his attention when he passed Ext.P2 order, still he could have reverted back to the higher authority before issuing the impugned order. He had passed Ext.P3 order without taking recourse to

the said procedure. He could have atleast heard the petitioner after issuing notice to her.

In the above facts and circumstances of the case, Ext.P3 order is set aside. Respondent No.1 shall refer the matter to the Director of Public Instruction who in turn shall place the matter before the revisional authority, the Government. It will be open to the Government to exercise its revisional power under Rule 92 of Chapter XIV A KER, if so advised. Appropriate action in the matter shall be taken by respondent No.3 as well as the Government, as expeditiously as possible, at any rate, within a period of three months from the date of receipt of a copy of this judgment.

The writ petition is disposed of as above.

A.K. BASHEER, JUDGE

vps

A.K. BASHEER, JUDGE

OP NO.20954/00

JUDGMENT

1ST MARCH, 2007